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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/805,673 | 03/12/2001 | Gary P. Rochelle | AQTP116898 | 3661 |

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EXAMINER

BOCHNA, DAVID

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3679

DATE MAILED: 04/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/805,673

Applicant(s)

ROCHELLE, GARY P.

Examiner

David E. Bochna

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kowalski.

In regard to claim 1, Kowalski discloses a fitting 34 and pipe section assembly (10, 22, 24) that is capable of being installed in tubing of a jetted bath to render the tubing adaptable to accept a close fit heater device, comprising:

a pipe section (22, 24, 10) having a center segment 10 integrally formed (see column 2, lines 6-9) with inlet and outlet end portions 22, 24 of the pipe section for fluid flow coupling to an inlet 18 and an outlet 20 of the tubing;

first and second fittings 31 disposed on the inlet and outlet portions 18, 20 of the pipe section;

wherein the center segment 10 of the pipe section may be selectively removed leaving the inlet and outlet portions 18, 20 including the first and second fittings 31; and

wherein the fitting and pipe section assembly may accept the close fit device 88 between the inlet and outlet portions of the fitting and pipe section assembly.

In regard to claim 3, the fitting 34 and pipe section assembly 22 is a unitary body (there are all one permanently connected piece).

In regard to claim 4, the close fit device 88 may be removably secured to the fittings by the fastening assembly.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of McLaughlin. Kowalski discloses a fitting as described above with a seal 80 which is positioned between the fitting 31 and the flange 34. Kowalski also discloses a nut 14. However, Kowalski does not disclose that the nut is split or that there is a split nut retainer. McLaughlin teaches supplying a pipe section 1 and fitting with a union nut 10 and a split nut retainer 15 in order to more easily facilitate assembly of the pipe assembly. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the nut of Kowalski to include a split nut, as taught by McLaughlin so that the fitting could be assembled more easily by allowing the nut to be placed over the fitting at numerous points during the assembly process

5. Claims 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of Thweatt. Kowalski discloses teaches replacing one pipe section 10 with another 88. However, Kowalski does not specifically disclose that one of the devices is a heating device. Thweatt teaches that placing a heating device (fig. 14) between tubing is common and

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routine in the art. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the devices of Kowalski to include heating devices, because the practice of placing heating devices in line with a tubing sections is common and routine in the art, as demonstrated by Thweatt.

6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of Luff. Kowalski discloses a fitting as described above. However, Kowalski does not disclose that the pipe section can be replaced with a T-fitting. Luff teaches replacing a linear pipe (fig. 4) with a T junction having a transverse pipe branch 2 which may be removably fastened to a transverse tubing segment of a jetted tub in order to increase the versatility of the pipe section assembly. . Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the pipe section of Kowalski to include a T junction, as taught by Luff, in order to increase the way in which the pipe section assembly can be utilized.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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8. Claims 1-24 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-50 of copending Application No. 10/076,865. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a fitting assembly consisting of a pipe section with first and second fittings disposed at each end which may be secured by a fastening assembly to a jetted apparatus.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See also MPEP § 804.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 3-9 and 23 have been considered but are not persuasive. Applicant argues that Kowalski does not teach making a pipe section having a center segment integrally formed with inlet and outlet end portions of the pipe section. However, as explained above, Kowalski discloses making the center segment 10 with integral inlet and outlet portions. Therefore, the rejection in view of Kowalski has been maintained.

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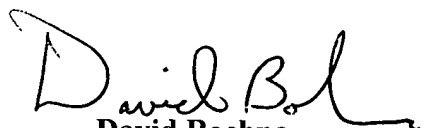
Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Robertson, Cretzler, Brodie, Callahan, Jr., et al., Woodling, Patterson and Koschinski all disclose similar fittings common in the art.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


David Bochna
April 19, 2003